

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Emerson Leslie

Case No. 2:19-cv-01182-JAD-NJK

5 Plaintiff

6 v.

7 Jennifer Nash, et. al.,

8 Defendants

**Order Dismissing
and Closing Case**

9 Plaintiff Emerson Leslie brings this civil-rights lawsuit to redress constitutional violations
10 that he claims he suffered while in the custody of the Nevada Department of Corrections.

11 Although he submitted an application to proceed *in forma pauperis* for prisoners, he has since
12 been released from custody and the Court ordered him to file a new application to proceed IFP as
13 a non-prisoner or pay the \$400 filing fee by April 3, 2020.¹ That deadline expired without a new
14 application, payment of the filing fee, or any request to extend the deadline. Leslie was warned
15 that his failure to timely comply with that order may result in the dismissal of this case.²

16 District courts have the inherent power to control their dockets and “[i]n the exercise of
17 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A
18 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
19 court order, or failure to comply with local rules.⁴ In determining whether to dismiss an action

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21 ¹ ECF No. 6.

22 ² *Id.* at 2.

23 ³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁴ *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–

1 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
2 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
3 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
4 availability of less drastic alternatives.⁵

5 The first two factors, the public’s interest in expeditiously resolving this litigation and the
6 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
9 ordered by the court or prosecuting an action.⁶ A court’s warning to a party that its failure to
10 obey the court’s order will result in dismissal satisfies the fifth factor’s “consideration of
11 alternatives” requirement,⁷ and that warning was given here.⁸ The fourth factor—the public
12 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
13 favoring dismissal.

14 IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without prejudice
15 based on the plaintiff’s failure to file an application to proceed *in forma pauperis* by a non-
16 prisoner or pay the filing fee as ordered. The Clerk of Court is directed to **ENTER**

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19 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
20 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

21 ⁵ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
Ferdik, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.


22 ⁶ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 ⁷ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁸ ECF No. 6 at 2 (“if Plaintiff does not timely comply with this order, dismissal of this action may result.”).

1 **JUDGMENT** accordingly and **CLOSE THIS CASE**. **No other documents may be filed in**
2 **this now-closed case**. If Leslie wishes to pursue his claims, he must file a complaint in a new
3 case, and he must either pay the \$400 filing fee or file an *in forma pauperis* application for non-
4 prisoners in that new case.

5 Dated: April 14, 2020

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8 U.S. District Judge Jennifer A. Dorsey
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